

**Consolidated Appeal**

**No. 23-1417**

**No. 23-3242**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

MATTHEW LEE PELTON  
*Defendant-Appellant*

On Appeal from the United States District Court  
for the Northern District of California  
Case No. 4:21-cr-00351-JSW-2  
Honorable Jeffrey S. White

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**UNOPPOSED MOTION TO SEVER CONSOLIDATED APPEAL**

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*Attorney for Appellant*  
Matthew Lee Pelton

Undersigned counsel for Appellant Matthew Lee Pelton respectfully moves this Court to sever the consolidated appeals of Case Nos. 23-1417 and 23-3242 and, as grounds, states as follows:

Mr. Pelton pled guilty pursuant to a plea agreement filed pursuant to Fed. R. Crim. P. 11(c)(1)(A) and (B). *See* N.D. Cal. Case No. 21-cr-00351-JSW ECF Doc. 137.<sup>1</sup> At the conclusion of the sentencing hearing, the trial court sentenced Mr. Pelton to a term of 360 months' imprisonment on Counts One and Two, said terms to be served concurrently. *See* ECF Doc. 153. On July 7, 2023, Mr. Pelton filed a timely Notice of Appeal to this Court, challenging the 360-month term of imprisonment that the trial court had imposed. *See* ECF Doc. 158. This Court docketed this appeal as Case No. 23-1417.

The trial court held a hearing on the matter of restitution on September 26, 2023. *See* ECF Doc. 187. On October 18, 2023, the trial court issued its order granting in full the restitution requested, awarding \$329,200 to Minor Victim 1 and \$574,573.30 to Minor Victim 2. *See* ECF Doc. 190 (later amended at ECF Doc. 191 to clarify that restitution is to be joint and several with the co-defendant).

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<sup>1</sup> All ECF citations will relate to this case number (N.D. Cal. Case No. 21-cr-00351-JSW).

On November 1, 2023, Mr. Pelton filed a timely Notice of Appeal to this Court, challenging the restitution order that the trial court had entered. *See* ECF Doc. 197. This Court docketed this appeal as Case No. 23-3242.

On November 6, 2023, this Court ordered that the two appeals (23-1417, challenging the sentence as it relates to the term of imprisonment imposed; and 23-3242, challenging the sentence as it relates to the restitution imposed) be consolidated. Appellant's Consolidated Opening Brief is due on March 25, 2024.

Undersigned counsel has completed a conscientious review of the record and concludes that, as a result of the appellate waiver in Mr. Pelton's plea agreement, the appeal in Case No. 23-1417 would be frivolous. Accordingly, as it relates to Case No. 23-1417, undersigned counsel intends to file an opening brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). In accord with Ninth Cir. R. 4-1, this necessarily must be accompanied by a separate motion to withdraw.

As it relates to the issues presented in Case No. 23-3242, however, having completed a conscientious review of the record and related research, undersigned counsel intends to file a substantive Opening Brief.

This split creates complications: how best to proceed in a situation where two appeals have been consolidated and, in one, withdrawal is required yet, in the other, representation is continued?

Undersigned counsel has consulted with the CJA Supervising Attorney. It was determined that proceeding by way of requesting a severance of the consolidated appeals would serve to cure the complications inherent in this situation.

Pursuant to Advisory Committee Note to Ninth Cir. R. 27-1(5), undersigned counsel has contacted opposing counsel, AUSA Kelly Volkar, to notify her of this Motion. Ms. Volkar has advised undersigned counsel that the government does not oppose this request to sever the matters.

Wherefore, for the reasons set forth above, it is respectfully requested that this Court sever the consolidated appeals in Case Nos. 23-1417 and 23-3242. The due date for the separate Opening Briefs would remain March 25, 2024.

DATED: March 18, 2024.

Respectfully submitted,

s/ Darlene Bagley Comstedt  
Darlene Bagley Comstedt

*Counsel for Appellant*  
*Matthew Lee Pelton*

## CERTIFICATE OF SERVICE

I declare that I am employed in the City and County of San Francisco, California and am over the age of eighteen years and not a party to this case. My business address is 2358 Market Street, San Francisco, CA 94114.

On the date set forth below, I served the following

### **Unopposed Motion to Sever Consolidated Appeal**

in the following manner:

  X   E-Mail/ECF      X   U.S. Mail           Hand Delivery           Fax

on the following persons or entities:

#### **BY ECF/Email:**

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#### **By U.S.P.S.:**

Matthew Pelton  
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I declare the above under the penalty of perjury and that the foregoing is true and correct. Executed this March 18, 2024, at San Francisco, California.

*s/ Darlene Bagley Comstedt*  
DARLENE BAGLEY COMSTEDT